

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.910 of 2018

Arising Out of PS. Case No.-13 Year-2015 Thana- TATARPUR District- Bhagalpur

Vikash Kumar Son of Balmiki Mandal, resident of Village- Digdhi, P.S.
Masudanpur, District- Bhagalpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Anita Kumari Singh, Advocate
For the Respondent/s : Mr. Jagdhar Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

13 15-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against the judgment and order of conviction and sentence dated 31.07.2015 whereby and where-under the petitioner was convicted for committing offence under Section 25(1-b)a of the Arms Act and sentence to rigorous imprisonment for two years and also to pay fine of Rs.2,000/-, in default simple imprisonment for one month.

3. The petitioner preferred an appeal before the First Appellate Court. The said appeal came up for hearing before the learned Additional District and Sessions Judge-3, Bhagalpur, the learned appellate court confirmed the order of conviction and sentence passed by the Trial Court. The petitioner has preferred



the instant revision assailing the legality and validity of the order of sentence affirmed by the Court of Appeal by its judgment dated 25.04.2018 and the order of conviction and sentence passed by the Court of the learned Chief Judicial Magistrate in Trial No.1227 of 2015 on 31.07.2015.

4. It is contended on behalf of the petitioner in the instant revision that during trial of the case prosecution examined as many as six witnesses. Amongst them the informant who is none other than the S.H.O. of Tatarpur police station, who conducted raid and claimed himself to have apprehended the accused. PW-3, 4 and 5 are police personnel who claimed that they were in the raid party and PW-6 is the Investigating Officer of this case.

5. According to the learned advocate for the petitioner, the trial of the case commenced with examination of one S. Kant who is not a charge sheeted witness. The Trial Court did not mention any reason as to why the Court give permission to the prosecution to examine the said S. Kant.

6. It is further submitted by the learned advocate for the petitioner that in the charge-sheet one Mukesh Kumar and Rupesh Kumar were shown as the witnesses of search and seizure of contraband articles from the possession of the



accused. However, prosecution failed to examine them. Thirdly, the learned advocate for the petitioner submits that 35 numbers of live ammunition were allegedly seized from a back pack of the accused. However, the said back pack was not exhibited.

7. It is also submitted by the learned advocate for the petitioner that one Ashok Thakur in whose Tea stall the petitioner was sitting and subsequently apprehended would have been the best independent witness on behalf of the prosecution. However, prosecution failed to produce the said Ashok Thakur as a witness in the instant case. Therefore, non production of the seizure witnesses and the independent witnesses who were available at the time of apprehension of the accused, made the entire prosecution case suspect.

8. The learned Trial Judge as well as the Court of Appeal believed the testimony of the witnesses who belong to the police force without any short of suspicion. Therefore, the impugned orders are bad in law and liable to be set aside.

9. In support of her contention, the learned counsel for the petitioner refers to a decision of a co-ordinate Bench of this Court reported in **2018(2) PLJR 274** wherein under the same facts and circumstance, the Trial Court disbelieved the evidence of the police personnel on the ground of non corroboration of



the evidence adduced by said witnesses by available independent witnesses who took part in the search and seizure of the petitioner as claimed by the prosecution.

10. Learned A.P.P. for the State on the other hand submits that the Trial Court examined the informant and the other police personnel, nothing suspicious came forward from their evidence during Trial of the case. Therefore, the impugned orders does not merit any reconsideration.

11. Having heard, the learned advocate for the parties and on careful perusal of the entire materials available on record, this Court finds that the Trial Court as well as the Court of Appeal based the order of conviction and sentence against the petitioner on the basis of the evidence adduced by the witnesses on behalf of the prosecution, all of them being the police officers.

12. In a very recent decision reported in **2023 SCC Online SC 986, Sathyan Vs. State of Kerala**, the Hon'ble Supreme Court placing reliance on **Mukesh Vs. State (Narcotic Branch Of Delhi)** reported in **(2020) 10 SCC 120** observed as follows :-

“Under Section 173 Cr.P.C., the officer in charge of a police station after completing investigation is required to file



the final report/chargesheet before the Magistrate. Thus, under the scheme of Cr.P.C., it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same.”

13. Therefore, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or doubt, entire prosecution version cannot be discarded and the accused is not to be straightway acquitted and until the accused is able to establish and prove the bias and prejudice. As held by the Apex Court in *State of Rajasthan Vs. Ram Chandra* reported in *(2005) 5 SCC 151*, the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case.

14. In *Sathyan* (supra) the Hon’ble Supreme Court was pleased to hold that prosecution case on the basis of the evidence of the police personnel cannot be doubted only on the



ground that all the witnesses on behalf of the prosecution were police personnel, each case is to be determined by its own fact and circumstances.

15. Here in the instant case, one Mukesh Kumar and Rupesh Kumar were shown as witnesses to the seizure in the seizure list which was exhibited by the Trial Court. However, the said Mukesh Kumar and Rupesh Kumar have not been examined by the prosecution in the instant case. At the same time the tea stall owner within whose premises the accused was apprehended and recovery of alleged contraband was made has not been examined by the prosecution.

16. This Court cannot take a contrary view of what has been stated above by the Hon'ble Supreme Court in Sathyan Vs. State of Kerala (supra) to the effect that the prosecution case cannot be thrown away only on the basis of the evidence of police personnel. If the evidence of the witnesses on behalf of the prosecution who are police personnel are found to be reliable, credible and trust worthy, there is no reason to disbelieve their evidence.

17. However, where there were independent witnesses who could corroborate the evidence of police personnel, non-examination of such witnesses touches the root of the



prosecution case and a reasonable suspicion is created to the effect as to whether prosecution case is true and beyond reasonable doubt or not. The prosecution had the opportunity to prove search and seizure of ammunitions from the possession of the accused by examining the independent witnesses but when the said witnesses were withheld, the accused is entitled to get an adverse presumption under Section 114(g) of the Indian Evidence Act.

18. For the reasons stated above, I am not in concurrence with the findings made by the learned Chief Judicial Magistrate, Bhagalpur in Trial No.1227 of 2015 and affirmed by the Court of Appeal in Cr. Appeal No.64 of 2015.

19. In my view, as a result of non examination of the independent witnesses on behalf of the prosecution inspite of their availability at the spot, prosecution case has not been proved beyond reasonable doubt.

20. In view of what has been stated above, this Court is of the view that the petitioner is entitled to get benefit of doubt and he is acquitted of the charges set at liberty and released from his bail bond.

21. The impugned order be immediately communicated to both the Courts below for information and



necessary action.

22. The instant revision is accordingly, allowed on contest. However, under the facts and circumstances of the case without any cost.

(Bibek Chaudhuri, J)

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